BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Bartlett Mortgage Inc. Personal Property Account #P-147292 Intangible Property Tax Year 2004	)) Shelby County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

TOTAL VALUE	ASSESSMENT
$2,309,200	$923,680

This matter was originally heard by the undersigned administrative judge on September 13, 2005. At that hearing, the assessor moved to dismiss the taxpayer's appeal as untimely. The administrative judge granted the motion pursuant to the Initial Decision and Order Granting Motion to Dismiss entered on September 26, 2005.

On October 11, 2005 the taxpayer filed a Petition to Reconsider. An Order Granting Petition for Reconsideration and Vacating Initial Decision and Order Granting Motion to Dismiss was entered on October 18, 2005.

On February 15, 2006 the administrative judge conducted a second hearing on the assessor's Motion to Dismiss. The taxpayer was represented by David C. Scruggs, Esq. The assessor was represented by Thomas E. Williams, Assistant County Attorney.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Jurisdiction

The threshold issue before the administrative judge concerns jurisdiction. This issue arises from the assessor's contention that the taxpayer's appeal was not timely filed.

The assessor claimed that she issued a Notice of Assessment Change on July 26, 2004. The notice indicated that the assessor was correcting an error and increasing the appraisal for subject account from $0 to $2,309,200. Since the taxpayer did not file its appeal to the State Board of Equalization until November 16, 2004,[1] the assessor asserted that the appeal was filed more than forty-five (45) days after the Notice of Assessment Change and must therefore be deemed untimely under either Tenn. Code Ann. §§ 67-5-509(e) or 67-5-1412(e).

The taxpayer essentially contended that the State Board of Equalization has jurisdiction over this appeal under either of two theories. First, the taxpayer maintained that reasonable cause exists if

[1] The appeal form was postmarked November 16, 2004 and received by the State Board of Equalization on November 18, 2004. The administrative judge finds that November 16, 2004 constitutes the filing date pursuant to Tenn. Code Ann. § 67-1-107.

the appeal is deemed untimely.[2] Second, the taxpayer argued that the assessor's actions did not constitute a correction of error and are therefore void.

The taxpayer relied primarily on the testimony of John Byrd, the President of Bartlett Mortgage, Inc. Mr. Byrd testified that the taxpayer did not receive a Notice of Assessment Change dated July 26, 2004. He also testified that Bartlett Mortgage occasionally had problems with the mail received and sent. Further, Mr. Byrd testified that the taxpayer first got notice of the change in value and assessment when it received its tax bill on September 14, 2004. Mr. Byrd had never received a bill for this account and he immediately had Tammi Montgomery, a senior accountant with Bartlett Mortgage, Inc., contact Gwendolyn Cranshaw of the Shelby County Assessor's Office in order to determine whether the assessor had made a mistake. Ms. Montgomery left several messages for Ms. Cranshaw from September 14, 2004 until September 27, 2004, when Ms. Montgomery finally spoke with Ms. Cranshaw's assistant, Precious Mitchell. Ms. Mitchell informed Ms. Montgomery that Ms. Cranshaw would be out of the office until October 6, 2004. Ms. Montgomery never received a return phone call from Ms. Cranshaw and was never able to speak with her on the phone. On October 7, 2004, Mr. Charles Tucker, Executive Vice President and Chief Financial Officer of Bartlett Mortgage, Inc., did finally speak with Ms. Cranshaw and she informed him that the intangible personal property taxes had been assessed based upon the taxpayer's retained earnings and surplus. The taxpayer immediately contacted counsel and counsel filed this appeal on November 16, 2004, forty-one days after the taxpayer learned that the assessor actually intended to impose the intangible personal property assessment and that it was not a mistake. The taxpayer submitted into evidence as exhibit #3 an internal memorandum dated October 7, 2004 which corroborated these facts.

The assessor's Director of Finance, Gwendolyn Cranshaw, testified that she did not have personal knowledge that the notice was sent. Ms. Cranshaw essentially testified that she directed a subordinate to mail the Notice of Assessment Change and assumed the notice was properly mailed. Ms. Cranshaw also testified as to the procedure generally followed when issuing such notices.

The administrative judge finds that for all practical purpose the assessor is relying on the rebuttable presumption created by Tenn. Code Ann. § 67-5-508(3) that the required notification for a change in assessment ". . . shall be effective when mailed." Respectfully, the administrative judge finds that Ms. Cranshaw's testimony did not lay a sufficient foundation to even allow the assessor to invoke the presumption. The administrative judge finds that Ms. Cranshaw is not the person responsible for mailing such notices and did not mail the particular notice at issue.

The administrative judge finds that even if it is assumed arguendo that the Notice of Assessment Change was properly mailed, the taxpayer established reasonable cause for its otherwise untimely appeal. Tennessee Code Ann. § 67-5-1412(e) states that:

[2] As will be discussed below, the taxpayer asserted that the assessor failed to establish that proper notice was given of the purported correction.

> The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer *up to March 1 of the year subsequent to the year in which the assessment was made.*

The administrative judge finds that the Assessment Appeals Commission has generally found reasonable cause when taxpayers fail to file a timely appeal due to circumstances beyond their control. The Commission directly addressed the issue of whether non-receipt of a notice amounts to reasonable cause in Appeal of: *Mary M. Headrick and Detlef R. Matt* (Knox Co., Tax Year 1993):

> Therefore, the question before this commission is, whether or not, non-receipt by the taxpayer of a notice from the assessor, constitutes reasonable cause for the taxpayer's failure to appeal to the local board and bring the appeal directly to the State Board as authorized by Tenn. Code Ann. Sec. 67-5-1412 (e). *We hold that it does.*
>
> [Emphasis Supplied]

Headrick at 3. The Commission reasoned in pertinent part as follows:

> . . . Upon observing Ms. Headrick's demeanor and evaluating her testimony concerning the history of mail delivery in her neighborhood, the Commission finds that the taxpayers, through no fault of their own, did not receive notice of the increased assessment. The Commission is aware of language in Tenn. Code Ann. § 67-5-508(3) which says that the required notification for a change in assessment ". . .shall be effective when mailed." We interpret that phrase to mean *only* that the required notification must be *mailed* at least ten (10) days before the county board of equalization commences its annual session and if the assessor has mailed the notice within the prescribed time frame, he or she has effectively complied with the notice requirement. The phrase, 'shall be effective when mailed,' should not be construed to mean that mailing the required notice creates a conclusive presumption that it was timely delivered to or received by the taxpayer. Such a construction would require this Commission to ignore modern day realities of the postal communications, of which we need no proof.
>
> * * *
>
> . . . In this cause, the proof is clear and convincing, that through no fault of their own, the taxpayers did not receive notice of the increased assessment and were not aware of same until they received the tax bill. Based on the proof before this Commission, failure to have knowledge of the increased assessment was patently a '. . .circumstance beyond the taxpayers control.'
>
> [Emphasis in original]

Headerick at 2-4.

Upon observing Mr. Byrd's demeanor and testimony and reviewing the internal memorandum dated October 7, 2004, the administrative judge finds that the taxpayer, through no fault of its own, did not receive the Notice of Assessment Change. Moreover, the taxpayer was unaware that intangible personal property taxes were being assessed for the first time until receiving the tax bill on September 14, 2004. At that point, the taxpayer took immediate steps to resolve the situation. The administrative judge finds that the taxpayer's appeal was not filed within forty-five (45) days of the tax billing date because its repeated attempts to speak with Ms. Cranshaw were not successful until

October 7, 2004. Accordingly, the administrative judge finds that the State Board of Equalization has jurisdiction in this matter.

II. Substantive Issues

A. Background and Contentions of Parties

The taxpayer timely filed an intangible personal property reporting schedule for tax year 2004. The schedule indicated that the taxpayer was a subsidiary of a bank and that all of their financials and assets were combined. Ms. Cranshaw testified that the assessor certified a "forced assessment of zero" for tax year 2004 (no Assessment Change Notice was produced for this assessment because it was not a change from the prior year). On June 22, 2004 the assessor requested and received a copy of the taxpayer's balance sheet. On July 26, 2004, the assessor issued a Notice of Assessment Change based on a correction of error pursuant to TCA §67-5-509(c)(1). This error correction increased the taxpayer's value and assessment from zero to a value of $2,309,200 and an assessment of $923,680. The taxpayer, through counsel, Evans & Petree, filed an appeal to the State Board. The assessor's position is under these circumstances there existed a correctable error. The taxpayer contends (1) that this is not a correctable error and (2) that the taxpayer is not subject to the tax on intangibles by virtue of its being part of a financial institution unitary group. In either case, it is the taxpayer's contention that the assessment should be voided.

B. Taxation of Intangible Personal Property

The Tennessee Constitution, in Article II, Section 28, gives the Legislature the power to classify Intangible Personal Property into subclassifications and to establish a ratio of assessment to value in each class or subclass. TCA §67-5-1101 et seq. governs the classification and assessment of stock. In pertinent part, the statute provides for the assessment and taxation of the "shares of stock of stockholders of any loan company, or investment company, or cemetery company." It directs that these shares of stock "shall be assessed at the actual cash value of same, less the appraised value of realty and appraised value of personal property otherwise assessed or returned for taxation..." The statute also outlines the requirement for a reporting schedule and the information to be supplied by the taxpayer.

C. Financial Institution Unitary Groups

TCA §67-4-2017 is entitled "Taxation of banks and financial institution unitary businesses." TCA §67-4-2017(b) states:

> The general assembly is hereby exercising its discretion granted in the Tennessee Constitution, Art. II, §28, to establish the manner in which banks shall be taxed. The allocation of taxes to local governments provided in subdivision (a)(1) shall be in lieu of the taxation of the subclassification of intangible personal property designated as "shares of banks and banking associations," and all taxes on the redeemable or cash value of all their outstanding shares of capital stock, certificates of deposit and certificates of investment, by whatever name called, of such bank or banking association; provided, that such bank or banking association shall nonetheless continue to be subject to ad valorem taxes

> on its real property, tangible personal property and all other taxes to which it is currently subject. (Emphasis added.)

"Unitary business" is defined in TCA §67-4-2004(34) as:

> ...business activities or operations of financial institutions that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. "Unitary business" may be applied within a single legal entity or between multiple entities.

TCA §67-4-2114(c) provides:

> Financial institutions which form a "unitary business," ...shall file a combined return and pay tax on all operations of the unitary business. (Emphasis added.)

The taxpayer, Bartlett Mortgage, Inc., is a wholly-owned subsidiary of Bank of Bartlett, Inc. Both entities are included in the unitary group filing of West Tennessee Bancshares, Inc. and Subsidiaries. Additionally, the administrative judge finds and concludes that, as a member of the unitary group, pursuant to TCA §67-4-2017(b), Bartlett Mortgage, Inc. is not subject to the intangible personal property tax provided for in TCA §67-5-1101.

D. Correction of Error Issue

Based upon the foregoing, the administrative judge finds it unnecessary to resolve this issue.

ORDER

It is therefore ORDERED that the Notice of Assessment of Change dated July 26, 2004 be set aside and subject account be valued as follows:

TOTAL VALUE	ASSESSMENT
$ -0-	$ -0-

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition

for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 10th day of March, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: David C. Scruggs, Esq.
Thomas E. Williams, Assistant County Attorney
Tameaka Stanton-Riley, Appeals Manager